vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.628 OF 2006

Ganpat Narayan Chumbale ... Appellant

V/s.

Dattu Rambaji Chumbale & Ors. ... Respondents

Mr.G.S. Godbole for Appellant
Mr.M.M. Sathaye for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 9, 2007**

P.C.:

. The appellant is the original defendant No.2 who claims that a Deed dated 5.1.1970 entered into between the plaintiff and Defendant No.1 was not a mortgage by conditional sale but was a transaction of sale. The plaintiff borrowed an amount of Rs.2,200/- from Defendant No.1 and the parties agreed that the suit property which was kept as security could be redeemed within a period of 15 years. Defendant No.1 sold the suit land to Defendant No.2 on 4.5.1970. The plaintiff therefore, filed the suit for redemption of the mortgage. This suit had been decreed by the trial Court. The trial Court has held that the transaction between the plaintiff and the defendant No.1 was a mortgage by conditional sale and not sale. This finding of the trial Court has been confirmed by the appellate

Court.

2. Section 58 (c) of the Transfer of Property Act clearly states that mortgage by conditional sale where a mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgaged money by a certain date, the sale would become absolute. The document dated 5.1.1970 clearly shows that the parties have agreed that if the amount of Rs.2,200/- was not returned within a period of 15 years, the transaction between them could be considered to be a sale. Both the Courts below have arrived at concurrent findings of fact and have held that the transaction contained in the document dated 5.1.1970 is a mortgage by conditional sale. No substantial question of law arises in this second appeal.

3. Second Appeal dismissed.